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JUL 13 2007

OFFICE OF PETITIONS

In re Application of :
Maertens et al. : DECISION ON APPLICATION
Application No. 09/638,693 : FOR
Filed: August 15, 2000 : PATENT TERM ADJUSTMENT
Attorney Docket No. 2752-15 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR § 1.705(b) filed November 30, 2006. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to seven hundred sixty-one (761) days.

The application for patent term adjustment is GRANTED to the extent indicated herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **three hundred four (304)** days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On August 30, 2006, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 0 days. On November 30, 2006, applicants timely submitted the instant application for patent term adjustment¹. Applicants maintain that the initial patent term adjustment is 761 days (i.e., $525 + 53 + 274 - 0 - 91$).

¹ PALM records indicate that the Issue Payment was filed on November 30, 2006.

Applicants state that the patent is not subject to a terminal disclaimer.

The record has been carefully reviewed and applicants' calculations of patent term adjustment considered. It is concluded that:

- The period of reduction of 131 days for applicant delay pursuant to 37 CFR 1.704(c)(7) is being removed. The application history supports a conclusion that applicants' response was not non-compliant. In his response of May 28, 2002, applicants request clarification of the Examiner's comments. Ultimately, by interview summary mailed August 7, 2002, the notice of noncompliant amendment mailed July 29, 2002 is withdrawn. This subsequent actions support a conclusion that applicants' original responses to the restriction requirement mailed December 17, 2001 were not non-compliant.
- The reduction of 32 days for applicant delay pursuant to 37 CFR 1.704(c)(8) is being removed. On November 17, 2005, applicants submitted prima facie evidence in the form of a date-stamped and itemized postcard, showing that an RCE, Amendment, Statement, IDS and fees were submitted on February 1, 2005. The IDS filed on December 19, 2005 was a copy of the IDS submitted with the RCE filed February 1, 2005. Moreover, the RCE and submission were filed after the filing of a notice of appeal and are not deemed to have been filed outside of the three-month period set forth in 1.704(b) or as a supplemental response within the meaning of 1.704(c)(8).
- However, the entry of 33 days for applicant delay pursuant to 37 CFR 1.704(c)(8) is being retained. Applicants' argument with respect to the memo dated June 6, 2005 (1296 OG 27 (July 5, 2005)) is not persuasive. This memo applied to subsequently filed amendments. The paper filed January 13, 2004 as filed was non-compliant. As stated in the memo such filings delayed prosecution and increased pendency of applications. Entry of a period of reduction is warranted.
- As agreed by applicants entry of a period of adjustment of 274 days for Office delay pursuant to §§ 1.702(a)(2) and 1.703(a)(3) is warranted. The Office took until March 2, 2006 to mail a non-final Office action in response to the

Request for Continued Examination (RCE) shown to have been filed on February 1, 2005. (On November 17, 2005 and December 19, 2005, applicants resubmitted copies of the RCE and submissions including an IDS).

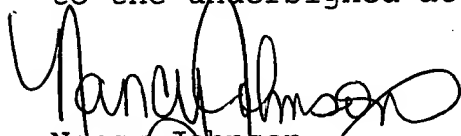
- As agreed by applicants the reduction of 91 days pursuant to 37 CFR 1.704(b) is correct (e.g., for the period from September 4, 2004 to December 3, 2004). In response to the final Office action mailed June 3, 2004, an amendment was filed on August 27, 2004. However, the amendment was not in compliance with 37 CFR 1.113(c) and so, the time period for reply continued to run. See Advisory Action mailed October 13, 2004. Applicants did not file a response in compliance with 37 CFR 1.113(c) until they filed the notice of appeal on December 3, 2004.
- Entry of a period of adjustment of 525 days for Office delay, as contended by applicants, is not warranted. A first Office action under 35 U.S.C. 132 within the meaning of 1.703(a)(1) was mailed on December 17, 2001. The subsequent actions in this case do not negate this fact. The correct period of adjustment is 63 days (not 525 days) for the period beginning on October 16, 2001 and ending on December 17, 2001.
- The entry of periods of adjustment of 70 days and 21 days for Office delay pursuant to § 1.703(a)(2). A response was submitted by applicants on September 13, 2002, and four months and 70 days later, on March 24, 2003, the Office mailed a response. It is noted that by decision mailed May 24, 2004, the Office denied petitioner's request to withdraw the March 24, 2003 restriction requirement. Likewise, a response was submitted by applicants on January 13, 2004, and four months and 21 days later, on June 3, 2004, the Office mailed a response.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is 304 days (63 + 70 + 21 + 274 days of Office delay reduced by 91 + 33 days of applicant delay).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application is being forwarded to the Publications Division for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", is written over the typed name and title.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of REVISED PAIR Screen

Day : Thursday
Date: 7/12/2007

PALM INTRANET

Time: 12:24:57

PTA Calculations for Application: 09/638693

Application Filing Date:	08/15/2000	PTO Delay (PTO):	154
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	287
Post-Issue Petitions:	0	Total PTA (days):	304
PTO Delay Adjustment:	437		

File Contents History

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106	07/09/2007	ADJUSTMENT OF PTA CALCULATION BY PTO	131		
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96	08/30/2006	MAIL NOTICE OF ALLOWANCE			
95	08/30/2006	MAIL EXAMINER'S AMENDMENT			
94	08/29/2006	ISSUE REVISION COMPLETED			
93	08/16/2006	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
92	08/29/2006	EXAMINER'S AMENDMENT COMMUNICATION			
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90	08/21/2006	NOTICE OF ALLOWABILITY			
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88	06/02/2006	RESPONSE AFTER NON-FINAL ACTION			
87	03/02/2006	MAIL NON-FINAL REJECTION			
86	02/28/2006	NON-FINAL REJECTION			
85	12/19/2005	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
84	01/05/2006	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
83	12/19/2005	REFERENCE CAPTURE ON IDS			
82	12/19/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		32	76

81	01/04/2006	DATE FORWARDED TO EXAMINER			
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79	12/07/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
78	12/01/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
77	12/02/2005	DATE FORWARDED TO EXAMINER			
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75	12/02/2005	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
74	02/08/2005	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
73	02/01/2005	WORKFLOW INCOMING AMENDMENT IFW			
72	02/01/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
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67	10/12/2004	ADVISORY ACTION (PTOL-303)			
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62	08/27/2004	MISCELLANEOUS INCOMING LETTER			
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47	07/01/2003	DATE FORWARDED TO EXAMINER			
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11	03/01/2001	MISCELLANEOUS INCOMING LETTER			
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8	08/15/2000	PRELIMINARY AMENDMENT			
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5	06/07/2001	APPLICATION IS NOW COMPLETE			
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3	10/11/2000	CORRESPONDENCE ADDRESS CHANGE			
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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